

## Briefly...

### ■ The Carry

The Obama Administration's proposed jobs bill has revived the idea of raising the tax on carried interest, the portion of an alternative investment manager's income that stems from performance. Such income is now taxed at the capital gains rate instead of the much higher ordinary income rate. Management fees are taxed at the ordinary income rate. The carried interest tax increase is said to be targeted at hedge funds and private equity firms, but the SSA and other real estate trade organizations believe it would unreasonably affect their industries which include many firms organized under the partnership structure.

### ■ Illinois Law

The final SSA-sponsored lien bill for 2011 was signed into law on August 26 by Illinois governor Pat Quinn. Primarily, the new measure: enables tenant notification by first class mail with certificate of mailing versus the current certified mail; reduces from two years to one the length of time one must hold excess funds from a lien sale; simplifies removal of motor vehicles and watercraft from a storage facility; and adds teeth to limitation of value provisions of rental agreements.

# Storage Operator on 'Other Side' of Eminent Domain

By Tim Dietz – SSA Sr. VP, Communications & Government Relations

Occasionally members of various industries and associations find themselves on different sides of issues that originally, on the surface, would seemingly be unifying subjects. One area that has garnered mixed opinions in the self storage industry is the seizure of private property via eminent domain by local governments. Historically, eminent domain was utilized for purposes that were clearly public in nature, such as roadways; however, a controversial 2005 Supreme Court decision muddied the issue, validating seizure for private use based on economic impact.

The handful of cases over the past few years that have affected the self storage industry have generally resulted in the elimination of the storage property to make way for a new structure. But one case, in California's San Fernando Valley, has a self storage operator championing eminent domain as a means of displacing an existing tenant so that his new facility can proceed.

Derrel Ridenour, owner of more than fifty Derrel's Mini-Storage properties, had planned to build a new facility in Visalia, California. Having owned a parcel along Demaree Avenue for 10 years, in 2009 Ridenour won a zoning change subject to \$1.4 million in infrastructure improvements to be funded by his company. The upgrades would extend beyond his property along an adjacent corridor which many local officials and businesses considered blighted.

Several dilapidated houses currently sit vacant in the development area, and only two homes along the parcel remain occupied. When presented with the roadway and sewer plans, both homeowners agreed to the improvements, which would infringe upon their front yards but result in more attractive aesthetics and greater functionality. However, after signing the zoning change agreement originally, one of the property owners, Rose Ann Walker, changed her mind.

Ridenour has filed suit against Walker to end the impasse and the city has refused to issue permits for the rest of the demolition and construction to begin until the lawsuit is resolved. This has prompted Ridenour to threaten a lawsuit against the City of Vasalia to enforce the zoning agreement through eminent domain proceedings. Complicating the matter, Walker, who lives in a nursing home and rents out the property in question, claims that her sons now own the home, not her, and they did not sign the zoning agreement.

This is a unique circumstance in which a developer from an industry occasionally targeted with eminent domain is actually seeking that the condemnation be executed upon another private party. Observers, including many local businesses, are inclined to support the storage developer in this case, citing the extreme blight along Demaree Avenue. Thus far the City has not budged.

The most visible recent eminent domain circumstance within the self storage industry involved the expansion of Columbia University into New York City's West Harlem area. The battle between the self storage operator and the "Goliathesque" university had garnered national attention because it would have been an opportunity for the Supreme Court to overturn its controversial 2005 *Kelo v. New London* judgment. That landmark case held that property could be seized for private interests because of the economic benefit to the public. Columbia University eventually prevailed in that battle. ❖